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Civil Engineering

AIRPORT JOINT USE AGREEMENTS



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OPR: HQ AFRC/CEPR (Mr James A. Glass)

Certified by: HQ AFRC/CE (Col Donald J. Meister)

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This instruction implements AFPD 32-10, *Installation and Facilities*, and applies to all Air Force Reserve Command (AFRC) flying units and their tenants that operate on public airports. It provides assistance for negotiating fair and reasonable charges to the Government (AFRC) for joint use of the flying facilities of the airport and guidance in preparing Airport Joint Use Agreements (AJUA) for joint use of a public airport in all cases where AFRC is either based at the airport (for example, Minneapolis-St Paul International Airport (IAP) Air Reserve Station (ARS) MN) or uses a public airport for proficiency training for its flight crews (for example, Muskegon IAP MI).

1. General:

1.1. Title 49, United States Code, Chapter 471, "Airport Development" (49 U.S.C. §§ U.S.C. 47101-47129) provides that each of the airport's facilities developed with financial assistance from the United States Government, and each of the airport's facilities usable for the landing and taking off of Government aircraft will be available without charge for use by Government aircraft in common with other aircraft, except that, if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used. Accordingly, AFRC units operating on public airports will enter into an AJUA with the appropriate airport owner/operator which will define the responsibilities of the respective parties and establish the annual charge to the Government for such joint use of the flying facilities of the airport. The charge shall represent the Government's reasonable share, proportional to its use, of the cost of operating and maintaining the airport's flying facilities jointly used.

1.2. The wing commander or his or her designee, may negotiate the AJUA. All AJUA negotiations will be conducted in close coordination with HQ AFRC/CEPR (Real Estate); Judge Advocate Office (JA); and the Air Force Office of the General Counsel (SAF/GCN). Review and active assistance by these offices will be requested throughout the negotiation process.

1.3. AJUAs normally will be for periods of 5 years. However, AJUAs may be negotiated for a longer or shorter period as conditions dictate. AJUAs will not be subject to midterm renegotiations without the written consent of all parties and the prior written approval of the Deputy Assistant Secretary of the Air Force (Installations) (SAF/MII).

1.4. The wing commander may initiate renewal negotiations with airport owner/operators 1 year prior to the expiration of the AJUA then in effect without the written approval of SAF/MII. The payment amounts and fire protection and crash rescue provisions are the only items that can be negotiated for a renewal AJUA. Written approval of the proposed AJUA must be obtained from SAF/MII prior to its execution by the parties.

1.5. A standard AJUA is at attachment 1. For new AJUAs, the word "DRAFT" will be stamped and centered at the top and bottom of each page of the document. The draft AJUA will be submitted to HQ AFRC/CEPR for forwarding to SAF/GCN for review and to SAF/MII for approval to negotiate. Upon completion of negotiations with the airport owner/operator, the negotiated AJUA will be submitted to SAF/MII through SAF/GCN for approval to execute.

2. Cost Sharing:

2.1. As stated in paragraph 1.1, AFRC and all its tenant users (hereinafter in this section collectively referred to as "AFRC") will share in appropriate costs of operating and maintaining the airport's flying facilities (jointly used flying facilities).

2.2. Within allowable categories listed in attachment 2, the AFRC contribution shall be a flat rate annual fee based on its proportionate use of the jointly used flying facilities, all other users and uses being considered. Proportionate use will be established through a tower count of military and civil aircraft flying operations for an entire fiscal year or calendar year, as the case may be, in lieu of a weight-frequency ratio according to SAF/MII policy.

2.3. Proportionate use will be based on costs occasioned rather than on benefits derived. Proportionate use by AFRC will be offset by any significant contributions in kind (services, major equipment, construction, etc., in coordination with functional HQ AFRC office of primary responsibility (OPR) provided toward operation of the jointly used flying facilities by AFRC. Capital improvement offsets should be credited over the useful life of the improvements according to customary accounting practices.

3. Major Repairs and New Construction:

3.1. Any major repair and/or new construction projects needed for the jointly used flying facilities (collectively "joint use projects") are not to be included in the AJUA. Any Government contribution to any joint use project shall be the subject of separate negotiations and written agreement between the airport owner/operator and the Government at such time as the work is required.

3.2. The standard AJUA at attachment 1 contains a provision excluding major repair and new construction from the AJUA.

DAVID S. SIBLEY, Brig Gen, USAFR
Assistant Vice Commander

Attachment 1
STANDARD AIRPORT JOINT USE AGREEMENT

STANDARD AIRPORT JOINT USE AGREEMENT
DATED

AIRPORT JOINT USE AGREEMENT

AIRPORT OWNER/OPERATOR NAME (AIRPORT NAME)

UNITED STATES OF AMERICA

AIRPORT JOINT USE AGREEMENT

AIRPORT OWNER/OPERATOR NAME

UNITED STATES OF AMERICA

Pages:

Recitals

Agreement

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2. Joint Use
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AIRPORT JOINT USE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____ 19____, by and between the (Name of Airport Owner/Operator), a _____ in the State of _____, and the United States of America, acting by and through the Commander, Air Force Reserve ("Government").

RECITALS:

A. The (OWNER/OPERATOR) owns and operates (Name of Airport) ("Airport") located in the County of _____, State of _____.

B. Title 49, United States Code, Chapter 471, "Airport Development" (49 U.S.C. §§ 47101-47129), provides that each of the Airport's facilities developed with financial assistance from the United States Government and each of the Airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used.

C. The Government requires substantial use of the flying facilities at the Airport for the Air Force Reserve Command (AFRC), (Insert Air National Guard and/or any other significant Federal tenant users, as appropriate), as well as for other occasional transient Government aircraft.

D. The (OWNER/OPERATOR) is agreeable to such substantial use, in common with other users of the Airport, of the flying facilities by the Government under this Agreement.

E. The Government and the (OWNER/OPERATOR) desire to provide for the delineation of responsibility for operation and maintenance of the flying facilities jointly used in common with others at the Airport, and to establish the Government's reasonable share, proportional to such use, of the cost of operating and maintaining such jointly used flying facilities.

AGREEMENT:

1. DEFINITION: For purposes of this Agreement, the jointly used flying facilities of the Airport are the runways, taxiways, lighting systems, navigational aids, marking and appurtenances open to public use and use by the Government, including all improvements and facilities pertaining thereto and situated thereon, all as outlined in (color) on the map titled _____ and attached hereto as Exhibit "A," and all future additions, improvements, and facilities thereto as may be added or constructed from time-to-time ("Jointly Used Flying Facilities") The Jointly Used Flying Facilities do not include land areas used exclusively by the Government or the terminal buildings, hangars, non-government parking aprons and ramps, or other areas or structures used exclusively by the (OWNER/OPERATOR) or its lessees, permittees, or licensees for civilian or commercial purposes.

2. JOINT USE: Subject to the terms and conditions of this Agreement, the Government shall have the use, in common with other users of the Airport, present and prospective, of the Jointly Used Flying Facilities, together with all necessary and convenient rights of ingress and egress to and from the Jointly Used Flying Facilities and the Air Force Reserve Installation and other Government facilities located on the Airport. Routes for ingress and egress for the Government's employees, agents, customers and contractors shall not unduly restrict the Government in its operations.

3. (OWNER/OPERATOR) RESPONSIBILITIES: The _____ will be responsible for the following services and functions, to standards in accordance with Paragraph 6 below.

a. Furnishing all personnel, materials, and equipment required in the rendering of the services to be provided under this Agreement.

b. Performing any and all maintenance of the Jointly Used Flying Facilities, including but not limited to:

(1) Joint sealing, crack repair, surface repairs, airfield markings and repair or replacement of damaged sections of airfield pavement;

(2) Runway, taxiway, and approach lighting and the regulators and controls therefor;

(3) Beacons, obstruction lights, wind indicators, and other navigational aids;

(4) Grass cutting and grounds care, drainage, and dust and erosion control of unpaved areas adjacent to runways and taxiways;

(5) Sweeping runways and taxiways;

(6) Controlling insects and pests;

(7) Removing snow, ice and other hazards from runways and taxiways within a reasonable time after such time runways and taxiways have been so encumbered.

c. Furnishing utilities necessary to operate the Jointly Used Flying Facilities.

d. Removing disabled civil aircraft as expeditiously as possible, subject to the rules and regulations of the National Transportation Safety Board (NTSB), in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

4. GOVERNMENT RESPONSIBILITIES: The Government will be responsible for the following:

a. Removing disabled Government aircraft as expeditiously as possible in order to minimize the time the Jointly Used Flying Facilities, or any part thereof, would be closed because of such aircraft.

b. Removing snow and ice from all ramps, aprons, and taxiways used exclusively by Government aircraft.

c. Subject to the availability of Federal appropriations therefor, repairing within a reasonable time damage to the Jointly Used Flying Facilities to the extent that such damage is caused solely by Government aircraft operations and/or Government equipment installed and maintained by Government on the Jointly Used Flying Facilities and is in excess of the fair wear and tear resulting from the military use contemplated under this Agreement.

5. PAYMENTS:

a. In consideration of and for the faithful performance of this Agreement, and subject to the availability of the Federal appropriations, the Government shall pay to the (OWNER/OPERATOR) as its proportionate share of the cost of operating and maintaining the Jointly Used Flying Facilities, the following:

(TO BE NEGOTIATED)

b. Payments for the periods set out in Paragraph 5a above shall be made upon submission of appropriate invoices to the Government as designated in Paragraph 5c below; provided, however, that if, during the term of this Agreement, sufficient funds are not available through the annual appropriations at the beginning of any fiscal year to carry out the provisions of this Agreement, the Government will so notify the (OWNER/OPERATOR), in writing.

c. Invoices for the payments provided hereunder shall be directed to:

(Payer Identification)_____

(Address)_____

or to such other address as the Government may from time-to-time provide to the (OWNER/OPERATOR) in writing.

d. Either party may request renegotiation if either party, at the request or with the formal concurrence of the other, as the case may be, provides services not contemplated by this Agreement or reduces or ceases services it undertakes to provide under this Agreement.

6. AIRFIELD MANAGEMENT:

a. The (OWNER/OPERATOR) agrees that maintenance of the Jointly Used Flying Facilities shall, at all times, be in accordance with Federal Aviation Administration ("FAA") standards for the operation of a commercial airport and operation of jet aircraft.

b. The Government agrees that any markings and equipment installed by it pursuant to Paragraph 7 of this Agreement shall not be in conflict with FAA standards.

7. GOVERNMENT RESERVED RIGHTS: The Government reserves the right, at its sole cost and expense, and subject to Paragraph 6b above, to:

a. Provide and maintain in the Jointly Used Flying Facilities airfield markings required solely for military aircraft operations.

b. Install, operate, and maintain in the Jointly Used Flying Facilities any and all additional equipment, necessary for the safe and efficient operation of military aircraft, including, but not limited to, Arresting Systems and NAVAIDS.

8. FIRE PROTECTION AND CRASH RESCUE: (TO BE NEGOTIATED).

9. RECORDS AND BOOKS OF ACCOUNT: The (OWNER/OPERATOR) agrees to keep records and books of account, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures made in fulfilling the obligations of this Agreement. The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of three (3) years after final payment, have access at all times to such records and books of account, or to any directly pertinent books, documents, papers, and records of any of the (OWNER'S/OPERATOR'S) contractors or subcontractors engaged in the performance of and involving transactions related to this Agreement. The (OWNER/OPERATOR) further agrees that representatives of the Air Force Audit Agency or any other designated representative of the Government shall have the same right of access to such records, books of account, documents, and papers as is available to the Comptroller General.

10. TERM: This Agreement shall be effective for a term of five (5) years beginning _____ and ending _____.

11. TERMINATION:

a. This Agreement may be terminated by the Government at any time by giving at least thirty (30) days' notice thereof in writing to the (OWNER/OPERATOR).

b. (1) The Government, by giving written notice to the (OWNER/OPERATOR), may terminate the right of the (OWNER/OPERATOR) to proceed under this Agreement if it is found, after notice and hearing by the Secretary of the Air Force or his or her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the (OWNER/OPERATOR), or any agent or representative of the (OWNER/OPERATOR), to any officer or employee of the Government with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such Agreement, provided that the existence of the facts upon which the Secretary of the Air Force or his or her duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.

(2) In the event this Agreement is terminated as provided in subparagraph 11b (1) above, the Government shall be entitled to pursue the same remedies against the (OWNER/OPERATOR) as it could pursue in the event of a breach of the Agreement by the (OWNER/OPERATOR), and in addition to any other damages to which it may be entitled by law, the Government shall be entitled to exemplary damages in an amount (as determined by the Secretary of the Air Force or his or her duly authorized representative) which shall be not less than three (3) or more than ten (10) times the cost incurred by the (OWNER/OPERATOR) in providing any such gratuities to any such officer or employee.

(3) The rights and remedies of the Government provided in this Paragraph 11b (2) above, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

12. GENERAL PROVISIONS:

a. Compliance With Law. The (OWNER/OPERATOR) shall comply with all Federal, State, and local laws, rules, and regulations applicable to the activities conducted under this Agreement.

b. Assignment. The (OWNER/OPERATOR) shall neither transfer nor assign this Agreement without the written consent of the Government, which shall not be unreasonably withheld.

c. Liability. Neither party shall be liable for damages to property or injuries to persons arising from acts of the other in the use of the Jointly Used Flying Facilities or occurring as a consequence of the performance of responsibilities under this Agreement.

d. Third Party Benefit. No member or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

e. Entire Agreement. It is expressly agreed that this written instrument embodies the entire financial arrangement and agreement of the parties regarding the use of the Jointly Used Flying Facilities by the Government and there are no understandings or agreements, verbal or otherwise, between the parties in regard to it except as expressly set forth herein. Specifically, no landing fees or other fees not provided in this Agreement will be assessed by the (OWNER/OPERATOR) against the Government in the use of the Jointly Used Flying Facilities during the term of this Agreement.

f. Modification. This Agreement may only be modified or amended by mutual agreement of the parties in writing and signed by each of the parties hereto.

g. Waiver. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, covenants, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, covenants, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

h. Paragraph Headings. The brief headings or titles preceding each paragraph or subparagraph are merely for the purpose of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

13. MAJOR REPAIR AND NEW CONSTRUCTION: Major repair projects and/or new construction projects required for the Jointly Used Flying Facilities (Collectively "Joint Use Projects") are not included under this Agreement. Any Government contribution to Joint Use Projects shall be the subject of separate negotiations and written agreement between the (OWNER/OPERATOR) and the Government at such time as the work is required. Any Government participation in the cost of Joint Use Projects is subject to the availability of Federal funds for such purpose at the time the work is required.

14. NOTICES: No Notice, order, direction, determination, requirement, consent or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

a. Written communication to the (OWNER/OPERATOR) shall be addressed as follows:

b. Written communication to the Government shall be addressed as follows:

15. EXHIBITS: One (1) exhibit is attached to and made a part of this Agreement, as follows:
Exhibit "A" Map of _____.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth opposite their respective signatures.

(AIRPORT OWNER/OPERATOR NAME)

Date: _____ BY: (Signature) _____
(Title) _____

UNITED STATES OF AMERICA

Date: _____ BY: (Signature) _____

FOR THE COMMANDER, AIR FORCE RESERVE

Attachment 2

ALLOWABLE COST ITEMS FOR AFRC AND TENANT USERS CONTRIBUTION

A2.1. The geographic division of areas of the Airport are: Airport exclusive use areas; AFRC (and any Federal tenant users) exclusive use areas; Jointly Used Flying Facilities. Only the costs of operating and maintaining the jointly used flying facilities are appropriate for negotiation in an Airport Joint Use Agreement (AJUA). The allowable airport owner/operator cost items for calculating the Government's proportionate share of the cost of operating and maintaining the jointly used flying facilities are:

- A2.1.1. Pavement maintenance (except for capital improvements).
- A2.1.2. Grass cutting.
- A2.1.3. Erosion control.
- A2.1.4. Storm drainage.
- A2.1.5. Surveying.
- A2.1.6. Snow plowing and removal.
- A2.1.7. Airfield lighting (materials, maintenance and labor).
- A2.1.8. Airfield supplies.
- A2.1.9. Insurance (except fire and liability).
- A2.1.10. NAVAIDS (materials, maintenance and labor).
- A2.1.11. Weather facilities.
- A2.1.12. Electrical repairs.
- A2.1.13. Plumbing repairs.
- A2.1.14. Airfield equipment (maintenance).
- A2.1.15. Administrative salaries not in excess of 30 percent in direct support of airfield maintenance and operation of the jointly used flying facilities (AFRC and all Federal users) contribution based on the proportional use of the 30 percent maximum).
- A2.1.16. Utilities.
- A2.1.17. Entomology (pest control).
- A2.1.18. Airfield striping (Air Force requirement).
- A2.1.19. Airfield sweeping (Air Force criteria).
- A2.1.20. Tower (when AFRC is primary user).

A2.2. Additional Comments:

A2.2.1. A traffic count from the FAA tower that delineates the civilian and military (AFRC) operations at the airport needs to be obtained; this establishes the military percentage of use. AFRC should provide internal operations traffic count for AFRC sorties to compare against the airport/FAA figures.

A2.2.2. Keep in mind that the Government cannot contribute to depreciation of airport facilities.

A2.2.3. If you have other flying tenants on your installation, reimbursement for that tenant's share of the jointly used flying facilities will be obtained. The tenant's reimbursement will be accomplished through a local agreement that does not involve the airport owner/operator.

A2.2.4. If any airport construction projects for the jointly used flying facilities would benefit the Air Force Reserve by participating in them, please indicate that information to HQ AFRC/CEP when you provide the above information.